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UNCLAS SECTION 01 OF 02 KHARTOUM 001422

SIPDIS

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STATE FOR AF/SPG, PRM, AND ALSO PASS USAID/W
USAID FOR DCHA SUDAN TEAM, AFR/SP
NAIROBI FOR USAID/DCHA/OFDA, USAID/REDSO, AND FAS
USMISSION UN ROME
GENEVA FOR NKYLOH
NAIROBI FOR SFO
NSC FOR JBRAUSE, NSC/AFRICA FOR TSHORTLEY
USUN FOR TMALY
BRUSSELS FOR PLERNER

E.O. 12958: N/A

TAGS: [PHUM](#) [PGOV](#) [PREF](#) [SOCI](#) [KAWC](#) [SU](#)

SUBJECT: DARFUR - POLICE OFFICIAL CONVICTED FOR RAPE

REF: A. KHARTOUM 0090,
[B](#). KHARTOUM 0272,
[C](#). KHARTOUM 0308

Summary and Comment

[1](#). (SBU) On May 3, 2006, West Darfur's El Geneina General Court convicted a Central Reserve Police Officer for the rape of a 10-year-old girl. The judge sentenced the felon to three years imprisonment and 100 lashes. While the verdict and proceedings illustrate the ability of West Darfur's courts to adjudicate crimes involving sexual and gender-based violence (SGBV), the international community should be wary of reading too much into the outcome of this case. The continued inability of government authorities to conduct rape prosecutions systematically, as evidenced by the West Darfur State Prosecutor's initial refusal to take the case, remains the most significant impediment to the pursuit of justice for survivors of SGBV in Darfur. USAID supported the Darfur Lawyers Legal Aid Network that helped the victim's lawyer prosecute the case under criminal statutes, but such resources cannot be provided to every survivor of SGBV in Darfur. Human rights groups estimate that incidents of rape occur on average every three to four days, with more than 100 incidents a year in South Darfur alone. Yet, according to the Government of National Unity Advisory Council for Human Rights, only 35 prosecutions with 28 convictions occurred in all of Darfur during the past three years. End summary and comment.

Sexual Violence and Impunity in Darfur

[2](#). (U) Incidents of rape and other forms of SGBV are widespread in Darfur and widely documented in U.S. government, UN, and non-governmental organization (NGO) reports. Likewise, Sudanese government authorities have consistently demonstrated a lack of ability and will to document, investigate, and prosecute cases of rape and SGBV per reftels A, B, and C.

[3](#). (SBU) Through the Initiative to Combat Violence Against Women (VAW Initiative), USAID and partner organizations have worked to prevent rape and SGBV,

respond to survivor's medical, psychological and economic needs, and change the pervading environment of criminal impunity and lack of justice for victims. In supporting the Darfur Lawyers legal Aid Network, USAID enabled survivors to seek redress. The distance between the victim's home and El Geneina posed several logistical challenges, not least of which was the transport of the victim and witnesses to the courts in El Geneina. The Office of the U.N. High Commissioner for Refugees (UNHCR) was involved in the rape case since the initial hearing in December 2005, and worked closely with the victim's lawyer to ensure these logistical problems were overcome.

15. (U) This case was pursued through "private prosecution." Under article 136 of Sudan's Criminal Procedures Act, a private lawyer may request authorization from a state prosecutor to prosecute a criminal matter. In this particular incident, the victim's attorney filed a request for permission to

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criminally prosecute the case with the state prosecutor of West Darfur, who subsequently approved the request. Since the accused individual was a member of the Central Reserve Police (CRP), an armed civil defense force under the authority of the Sudanese government, a special application to prosecute the accused in a civilian criminal court was presented to his commander. The victim's lawyer won approval for this special application after several court appearances.

16. (U) Prosecution of this case was finalized in El Geneina on May 3, 2006, when the judge handed down a decision against the accused. The judge convicted the accused of raping a minor and sentenced him to three years imprisonment and 100 lashes. Sudanese criminal procedures permit the defendant to appeal the conviction and sentence. If successful both the conviction and sentence could be overturned; however, there is no indication that the felon has appealed the decision.

Factors that Contributed to Conviction

17. (U) This case marks only the second known conviction of a government official for rape in Darfur. As such, the following factors contributed to the successful conclusion of this case:

- A) Victim access to a dedicated and experienced private lawyer: In this case, the victim benefited from immediate access to the expertise of a lawyer who had more than 20 years of criminal law experience through a referral from the USAID-supported Darfur Lawyers Legal Aid Network;
- B) Subsidization of transport costs by the Darfur Lawyers Legal Aid Network: Without financial assistance, most of Darfur's population cannot afford prohibitive travel expenses or other costs required to privately prosecute criminal activity in the region;
- C) Victim social support: The social support provided to the victim by her family proved crucial to the successful conclusion of this case. Family support also ensured that the lawyer had the necessary time and resources to prepare and interview the victim as well as family members and neighbors who witnessed the crime;
- D) Weak opposition: UNHCR notes that the defendant was not represented by legal counsel. Furthermore, the defendant called two alibi witnesses who gave contradictory evidence; and,

E) Discrete criminal proceedings: During the trial, the victim gave evidence in the presence of only the judge and the defendant in the judge's private chambers. This very notable improvement in the justice system's treatment of victims should be promoted throughout Darfur.

Final Remarks

¶8. (U) Few successful prosecutions for rape have occurred in recent history in North, South, and West Darfur. The fact that this case resulted in a successful conviction is a notable achievement, an outcome to be encouraged. By international standards, however, a three-year sentence for the rape of 10-year-old girl is a light punishment. According to the prosecuting attorney, procedural law in this case prescribed no minimum sentence and allowed for a maximum sentence of 10 years. In addition, the West Darfur State Prosecutor (Attorney General) holds the mandate and responsibility to prosecute criminal cases of this nature but refused to prosecute this case until ordered to do so by the State Ministry of Justice.

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